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February 19, 2015

BY ECF:

Honorable Ronnie Abrams
United States District Judge
United States Courthouse
40 Foley Square, Room 1506
New York, New York 10007

Re: Miriam Freier v. Vertical Capital, LLC, et. al.
Index Number 14-CV-9623 (RA)

Dear Judge Abrams:

We represent the Plaintiff in the referenced matter.

Today, the Securities and Exchange Commission (“SEC”) found that some of the named-Defendants in this matter (and Defendant Vertical Capital’s broker dealer, VCAP Securities, LLC (“VCAP”)) violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, specifically by fraudulently deceiving other market participants while conducting auctions to liquidate collateralized debt obligations (CDOs). VCAP agreed to pay disgorgement and prejudgment interest of \$1,149,599 while Defendant Graham agreed to pay disgorgement and prejudgment interest of \$127,733 plus a penalty of \$200,000. The SEC’s censured VCAP and requires the firm and Graham to cease and desist from committing or causing any future violations of Section 10(b) of the Exchange Act and Rule 10b-5. This information was published in an SEC press release, made public this afternoon, February 18, 2014. A copy of the SEC Press Release is enclosed.

We bring this information to the Court as this is an important development in the instant litigation still pending before your Honor. It is noteworthy to point out that, despite Defendant’s contentions stated in their motion papers, Plaintiff Miriam Freier’s complaints, for which she claims she was unlawfully retaliated, were indeed well-founded.

Respectfully submitted,

/s/ Eric R. Stern

Eric R. Stern, Esq.

cc: Counsel (via ECF)



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PRESS RELEASE



SEC Charges New York-Based Brokerage Firm and CEO With Committing Fraud During CDO Liquidation Auctions

**FOR IMMEDIATE RELEASE
2015-36**

Washington D.C., Feb. 19, 2015 — The Securities and Exchange Commission today charged a New York City-based brokerage firm and its CEO with fraudulently deceiving other market participants while conducting auctions to liquidate collateralized debt obligations (CDOs).

An SEC investigation found that VCAP Securities and Brett Thomas Graham improperly arranged for a third-party broker-dealer to secretly bid at these same auctions on behalf of their affiliated investment adviser in order to acquire certain bonds to benefit the funds it managed. Under engagement agreements with the CDO trustees, VCAP and its affiliates were prohibited from bidding while serving as liquidation agent for these auctions. VCAP had access to all of the confidential bidding information as the liquidation agent, and Graham exploited it to ensure their third-party bidder won the coveted bonds at prices only slightly higher than other bidders. VCAP's investment adviser affiliate then immediately bought the bonds from its secret bidder.

VCAP and Graham agreed to pay nearly \$1.5 million combined to settle the SEC's charges, and Graham is barred from the securities industry for at least three years.

"Graham abused a position of trust by playing the roles of both conductor and bidder during CDO liquidation auctions to the detriment of other participants," said Michael J. Osnato, Chief of the SEC Enforcement Division's Complex Financial Instruments Unit. "The settlement requires Graham and VCAP to give up fees they obtained while conducting these unfair liquidations that landed certain bonds in their fund manager's portfolio."

According to the SEC's order instituting a settled administrative proceeding, Graham and VCAP made material misrepresentations to the trustees of the various CDOs for which VCAP served as liquidation agent. After Graham had discussed bidding arrangements with the third-party broker-dealer, VCAP and Graham falsely represented in engagement agreements that they and their affiliates would not bid in the auctions or misuse confidential bidding information. VCAP provided the various trustees with documents that did not disclose that its investment adviser affiliate was actually the winning bidder. VCAP's scheme enabled the investment adviser affiliate to obtain a total of 23 bonds during five auctions.

The SEC's order finds that VCAP and Graham violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. VCAP agreed to pay disgorgement and prejudgment interest of \$1,149,599 while Graham agreed to pay disgorgement and prejudgment interest of \$127,733 plus a penalty of \$200,000. The SEC's order censures VCAP and requires the firm and Graham to cease and desist from committing or causing any future violations of Section 10(b) of the Exchange Act and Rule 10b-5. VCAP and Graham consented to the SEC's order without admitting or denying the findings.

The SEC's investigation was conducted by the Complex Financial Instruments Unit and led by Sarra Cho and Christopher Nee with assistance from Kapil Agrawal and Alfred Day. The case was supervised by Andrew Sporkin and Mr. Osnato.

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Related Materials

- SEC order